

United States Bankruptcy Court
District of Massachusetts
Eastern Division

In Re:)	
)	
Debra Jean Silva,)	Chapter 7
Debtor)	Case No. 09-19222-WCH
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Sovereign Bank,)	
Plaintiff)	
)	
v.)	
)	
Robert B. Our Co., Inc., Rockland)	
Trust Company, Edward E. Veara,)	
Hallsmith-Sysco Food Services,)	
LLC, Royal Bank America)	Adversary Proceedings
Leasing, John F. Noons, Inc., The)	Case No. 10-01205
Commonwealth of)	
Massachusetts, Nickerson)	
Lumber Company, Cape Tip)	
Seafood, Inc., Timepayment)	
Corp. 85-87 Shankpainter Road,)	
LLC, Clement A. Silva, individually)	
and as Trustee of the ClemDeb Realty)	
Trust, Debra J. Silva, as Trustee of)	
the ClemDeb Realty Trust, and)	
Stephen E. Shamban, as Chapter 7)	
Trustee,)	
Defendants)	

**Robert B. Our Co., Inc.'s Answer to Cross-Claim of Stephen E.
Shamban, Chapter 7 Trustee**

Defendant Robert B. Our Co., Inc. answers the cross-claim as follows:

To the extent the unnumbered first paragraph requires a response, the defendant states that Clement A. Silva, as manager of 85-87 Shankpainter Road, LLC, the purported owner of 85-87 Shankpainter Road, Provincetown, MA (the “Property”), granted defendant a mortgage on the Property on July 17, 2008. The mortgage was granted as security for a judgment the defendant had obtained against Mr. Silva in the amount of \$25,691.71, with interest accruing at a rate of 8% per year. Even if 85-87 Shankpainter Road, LLC did not own the Property when it granted the mortgage to defendant, as the trustee has alleged, the defendant is still entitled to a portion of the surplus proceeds based on estoppel, mutual mistake, fraud, and general equity principles.

Parties

1. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 1.
2. Admitted.

Jurisdiction

3. The allegations set forth in paragraph 3 are conclusions of law, which require no answer.

Facts

4. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 4.

5. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 5.
6. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 6.
7. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 7.
8. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 8.
9. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 9.
10. The defendant admits that it is the mortgagee of a mortgage against the property recorded at the Barnstable County Registry of Deeds on July 18, 2008, in Book 23052, Page 111. The defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 10.
11. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 11.
12. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 12.
13. Denied. The defendant has equitable rights and claims to the surplus proceeds. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 13.

Count I (11 U.S.C. § 544)

14. The defendant restates and incorporates by reference its responses to paragraphs 1–13.
15. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 15.
16. The defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 16.
17. Denied.
18. The defendant admits that 11 U.S.C. § 544(a) confers certain rights on a bankruptcy trustee, but denies that those rights should affect the defendant's entitlement to the surplus proceeds.
19. The defendant admits that 11 U.S.C. § 544(a) confers certain rights on a bankruptcy trustee, but denies that those rights should affect the defendant's entitlement to the surplus proceeds.
20. Denied.
21. Denied.
22. Denied.

Affirmative Defenses

First Affirmative Defense

The cross-claim fails to state a claim on which relief may be granted.

Second Affirmative Defense

The trustee has waived all claims against the defendant.

Third Affirmative Defense

The cross-claim is barred by the doctrine of estoppel.

Fourth Affirmative Defense

The trustee's rights and claims under 11 U.S.C. § 544 are invalid and subordinate as to the defendant's claims and rights to the surplus proceeds.

Fifth Affirmative Defense

Neither the trustee nor any other creditor of the debtor relied to their detriment upon the records of the Barnstable County Registry of Deeds.

Sixth Affirmative Defense

The defendant has claims to the surplus proceeds based on estoppel, mutual mistake, fraud, and general equity principles.

The defendant respectfully requests that this Honorable Court:

- A. dismiss the cross-claim with prejudice, and deny all relief requested by the trustee;
- B. enter an order reforming the defendant's mortgage or declaring that the defendant's entitlement to the surplus proceeds is superior to the trustee's; and
- C. award further relief as may be just and proper.

Respectfully submitted,
Robert B. Our Co., Inc.
By its attorneys,

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Dated: November 19, 2010

Certificate of Service

I hereby certify that that I have this date caused a copy of the following documents to be electronically transmitted to the following persons:

Document: Robert B. Our Co., Inc.'s Answer to Cross-Claim of Stephen E. Shamban, Chapter 7 Trustee

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Dated: November 22, 2010

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Certificate of Service

I, Frank J. Shealey, certify that I have this 22nd day of November, 2010, served a copy of Robert B. Our Co., Inc.'s Answer to Cross-Claim of Stephen E. Shamban, Chapter 7 Trustee on the parties or persons listed below, by mail, postage prepaid, as indicated below.

/s/ Frank J. Shealey

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